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TRACY HOPE DAVIS

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re

CASH CLOUD, INC. dba COIN CLOUD,

Debtor.

Case No: 23-10423-mkn

Chapter 11

Date: April 20, 2023

Time: 10:30 a.m.

Location: Telephone or Video Conference

**UNITED STATES TRUSTEE’S OPPOSITION AND RESERVATION OF RIGHTS TO  
DEBTOR’S MOTION FOR FINAL ORDERS (I) AUTHORIZING CONTINUED USE  
OF PREPETITION BANK ACCOUNTS; AND (II) GRANTING RELATED RELIEF**

Tracy Hope Davis, the United States Trustee for Region 17 (“U.S. Trustee”), by and through her undersigned counsel, hereby opposes (the “Opposition”) final approval of the Debtor’s *Motion for Final Orders (I) Authorizing Continued Use of Prepetition Bank Accounts; and (II) Granting Related Relief* (the “Cash Management Motion”). [ECF No. 5]. In support of her Opposition, the U.S. Trustee respectfully represents as follows:

**I. INTRODUCTION**

The Court should prohibit the Debtor from retaining its prepetition bank accounts with Surety Bank, People First Bank, and The Commercial Bank (the “Prepetition Bank Accounts”)

for two reasons. First, the Prepetition Bank Accounts are not on the U.S. Trustee's Authorized Depository list for the District of Nevada. Second, the Debtor has not met its burden of demonstrating sufficient cause to waive the collateralization requirements of 11 U.S.C. § 345(b) and U.S. Trustee Chapter 11 Guidelines. Given the Debtor's significant deposits and/or investments in the Prepetition Bank Accounts, a waiver of the requirements found in Section 345(b) would pose a significant risk to the estate. Thus, the Cash Management Motion should be denied.

The U.S. Trustee reserves all rights, including, but not limited to her right to take any appropriate action under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules for the U.S. Bankruptcy Court for the District of Nevada.

The U.S. Trustee's Opposition is supported by the following memorandum of points and authorities and any argument the Court may permit during the hearing.

## **II. MEMORANDUM OF POINTS AND AUTHORITIES**

Pursuant to 28 U.S.C. § 586(a)(3), the U.S. Trustee is charged with supervising the administration of cases and trustees under the Bankruptcy Code. To enable the U.S. Trustee to carry out that duty, Congress has granted the U.S. Trustee standing to raise and to "appear and be heard on any issue in any case or proceeding" brought under the Bankruptcy Code. 11 U.S.C. § 307. The U.S. Trustee consents to this Court entering final orders in this matter.

### **A. Background and Procedural Posture**

1. On February 7, 2023 (the "Petition Date"), the Debtor Cash Cloud, Inc. dba Coin Cloud (the "Debtor") filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Code commencing the above-captioned case. [See ECF No. 1]. The Debtor is currently a debtor-in-

possession under Sections 1107 and 1108 of the Code and is represented by Fox Rothschild, LLP. [See ECF Docket *generally*].

2. The 11 U.S.C. § 341 meeting of creditors was conducted and concluded on March 16, 2023. [See ECF Nos. 2 and 300].

3. On February 17, 2023, the U.S. Trustee appointed an Official Committee of Unsecured Creditors (“OCUC”) in this case. [See ECF No. 131]. The U.S. Trustee later increased the membership of the OCUC from five to seven on February 28, 2023. [See ECF No. 177].

4. In its Schedule A/B filed on March 9, 2023, the Debtor discloses the following Prepetition Bank Accounts:

- a. People First Bank “Backup Account” ending in 6240 (\$73,374.72 Petition Date balance);
- b. Surety Bank “Accounts Payable Account” ending in 4699 (\$62,304.32 Petition Date balance);
- c. Surety Bank “Operating Account” ending in 4665 (\$544,097.87 Petition Date balance);
- d. Surety Bank “Payroll Account” ending in 4681 (\$312,843.73 Petition Date balance);
- e. The Commercial Bank “Accounts Payable Account” ending in 3833 (\$60,967.04 Petition Date balance);
- f. The Commercial Bank “Extra Account” ending in 3866 (\$10.00 Petition Date balance);
- g. The Commercial Bank “Operating Account” ending in 3844 (\$321,164.37 Petition Date balance); and
- h. The Commercial Bank “Spare Account” ending in 3855 (\$386.49 Petition Date balance).

[See ECF No. 239].<sup>1</sup>

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<sup>1</sup> The Debtor appears to have closed two of its Prepetition Bank Accounts with Surety Bank after the Cash Management Motion was filed but prior to the filing of its Schedule A/B (*i.e.*, Surety Bank Accounts ending in 4804 and 9993. [Compare ECF No. 5 with ECF No. 239])

5. None of the Debtor's Prepetition Bank Accounts are on the U.S. Trustee's Authorized Depository list for the District of Nevada.<sup>2</sup>

### **The Cash Management Motion**

6. The Debtor filed the Cash Management Motion on February 7, 2023, explaining that it maintains a cash management system as part of the ordinary course of its business that allows the Debtor to collect, transfer, and disburse funds. [See ECF No. 5; see also ECF No. 19, Omnibus Supporting Declaration]. The Debtor operates approximately 4,983 cryptocurrency automated teller machines that perform crypto-related transactions throughout the United States by collecting and holding cash from customer purchases of cryptocurrency. [Id.]. According to the Debtor, the cash is collected by the Debtor's armored truck carrier vendors and deposited into the Prepetition Bank Accounts, depending on geographic area and other considerations. [Id.].

7. As part of the Cash Management Motion, the Debtor seeks authorization to continue the use of its Prepetition Bank Accounts rather than open debtor in possession accounts. [Id.].

8. After a February 10, 2023, preliminary hearing on the Cash Management Motion, which was conducted on shortened time, the Court entered an order allowing Debtor to continue use of the Prepetition Bank Accounts on an interim basis. [See ECF No. 111].

9. As permitted by the Court's order shortening time, the U.S. Trustee made an oral opposition to the Cash Management Motion during the first day hearing seeking compliance with Section 345 to protect creditors against the loss of estate funds deposited or invested by the Debtor, which was overruled by the Court. *Id.*

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<sup>2</sup> [https://www.justice.gov/ust-regions-r17/file/authorized\\_depository\\_nv.pdf/download](https://www.justice.gov/ust-regions-r17/file/authorized_depository_nv.pdf/download)

10. Pursuant to a stipulated order between the Debtor and the U.S. Trustee, written oppositions to any final relief regarding the Cash Management Motion are due on or before April 6, 2023. [See ECF Nos. 199 and 205].

**B. Authorities & Discussion**

11. Bankruptcy Code Section 345(b) protects creditors against the loss of estate funds deposited or invested by bankruptcy debtors. *See In re CWNevada LLC*, 602 B.R. 717, 744 (Bankr. D. Nev. 2019) (“[t]hose requirements are designed to ensure the safety of the funds held by a trustee or debtor in possession as a fiduciary of a bankruptcy estate”); *Cf. In re Columbia Gas Systems Inc.*, 33 F.3d 294, 301 (3d Cir. 1994) (“[e]nsuring the safety of the bankruptcy funds has been the foremost goal”).

12. Specifically, Section 345(b) provides that money of the estate shall be insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States. Money of the estate may also be deposited in an entity that has posted a bond in favor of the United States or has deposited securities with the Federal Reserve Bank.

13. A court may waive the requirements of Section 345 upon a showing of “cause.” *See* 11 U.S.C. § 345(b)(2). Thus, the Court may modify the requirements of Section 345(b) for “‘just cause’ where strict compliance might ‘work to needlessly handcuff larger, more sophisticated debtors.’” *See In re Ditech Holding Corp.*, 605 B.R. 10, 22 (Bankr. S.D.N.Y. 2019) (emphasis added).

14. To ensure compliance with Section 345(b), the U.S. Trustee has implemented guidelines for debtors in possession regarding bank accounts (the “U.S. Trustee Guidelines”). Among other things, the U.S. Trustee Guidelines require debtors in possession to close their pre-

petition bank accounts and provide proof of the establishment of debtor in possession account(s) at U.S. Trustee Authorized Depositories. *See* U.S. Trustee Chapter 11 Operating and Reporting Guidelines for Debtors in Possession (Region 17), at ¶ 3, available at <https://www.justice.gov/ust-regions-r17/file/guidelines.pdf/download>.<sup>3</sup>

15. Establishing a debtor in possession account “is a bankruptcy related task that is essential to a debtor’s reorganization.” *In re Helicraft Holdings, LLC*, 2017 Bankr. LEXIS 3629, \*7 (Bankr. D. Mont., Oct. 18, 2017).

16. U.S. Trustee Authorized Depositories have agreed to maintain collateral, unless an order of the bankruptcy court provides otherwise, in an amount of no less than 115 percent of the aggregate bankruptcy funds on deposit in each bankruptcy estate that exceeds the FDIC insurance limit. *See* U.S. Trustee Program Policy and Practices Manual, Volume 7, “Banking and Bonding,” (the “UST Manual”), §§ 7-1.1 and 7-1.2.1, at pp. 1-2, available at [https://www.justice.gov/ust/file/volume\\_7\\_banking\\_and\\_bonding.pdf/download](https://www.justice.gov/ust/file/volume_7_banking_and_bonding.pdf/download).<sup>4</sup> U.S. Trustee Authorized Depositories have also agreed to make periodic reports so that the U.S. Trustee can monitor compliance. *See* UST Manual, at § 7-1.3.2, at p. 5.

17. In addition to protecting creditors against the loss of estate funds deposited or invested by bankruptcy debtors, the requirement of establishing debtor in possession accounts “provides a clear line of demarcation between pre-petition and post-petition claims and payments

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<sup>3</sup> The U.S. Trustee is mindful that some courts have concluded that guidelines established by the U.S. Trustee do not have the force and effect of law. *See, e.g., In re Young*, 205 B.R. 894, 897 (Bankr. W.D. Tenn. 1997); *In re Gold Standard Baking, Inc.*, 179 B.R. 98, 105-06 (Bankr. N.D. Ill. 1995); *In re Lani Bird, Inc.*, 113 B.R. 672, 673 (Bankr. D. Hawaii 1990); *In re Johnson*, 106 B.R. 623, 624-25 (Bankr. D. Neb. 1989). As a result, “if the court is to require debtors to comply with particular provisions of the U.S.T.’s Guidelines, it must be for a reason independent of the Guidelines themselves.” *Johnson*, 106 B.R. at 624.

<sup>4</sup> The UST Manual is available for download at <https://www.justice.gov/ust/united-states-trustee-program-policy-and-practices-manual>.

1 and helps protect against the inadvertent payment of pre-petition claims by preventing banks  
 2 from honoring checks drawn before the petition date.” *BCL-Sheffield LLC v. Gemini Int’l, Inc.*  
 3 (*In re Tolomeo*), 537 B.R. 869, 880 (Bank. N.D. Ill. 2015).

4  
 5 18. In determining whether cause exists under 11 U.S.C. § 345(b), courts have  
 6 examined the totality of the circumstances. *See In re Serv. Merch. Co., Inc.*, 240 B.R. 894, 896  
 7 (Bankr. M.D. Tenn. 1999); *In re Ditech Holding Corp.*, 605 B.R. at 17. As part of this analysis,  
 8 courts have considered the following factors:

- 9 a. The sophistication of the debtor’s business;
- 10 b. The size of the debtor’s business operations;
- 11 c. The amount of investments involved;
- 12 d. The bank ratings (Moody’s and Standard and Poor) of the  
 financial institutions where debtor-in-possession funds are  
 held;
- 13 e. The complexity of the case;
- 14 f. The safeguards in place within the debtor’s own business of  
 insuring the safety of the funds;
- 15 g. The debtor’s ability to reorganize in the face of a failure of  
 one or more of the financial institutions;
- 16 h. The benefit to the debtor;
- 17 i. The harm, if any, to the estate; and
- 18 j. The reasonableness of the debtor’s request for relief from  
 Section 345(b) requirements in light of the overall  
 circumstances of the case.

19  
 20 *See In re Serv. Merch. Co., Inc.*, 240 B.R. at 896.

21 19. Here, the Debtor contends that requiring it to open new debtor in possession  
 22 accounts would complicate its cash management system, increase operating costs and  
 23 workload, delay receipts from the Debtor’s automated teller machines, and slow down  
 24 payments to vendors and employees. [*See ECF Nos. 5 and 19*].

25  
 26 20. The Debtor has not, however, addressed many of the factors identified by the  
 27 *Serv. Merch.* court, including (i) the Debtor’s safeguards for ensuring the safety of its funds  
 28 and (ii) the Debtor’s ability to reorganize if a financial institution holding the Debtor’s funds

1 fails. Given the size of the deposits and/or investments at Prepetition Bank Accounts, which  
2 totaled over \$1,375,148 on the Petition Date, there appears to be significant risk to the estate.

3 21. Accordingly, the U.S. Trustee opposes the Cash Management Motion and the  
4 entry of a final order waiving the requirements of Section 345, because the Debtor has failed to  
5 provide sufficient evidence that supports a finding that cause exists for this waiver.  
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7 22. The overriding concern of the U.S. Trustee is that, should a failure  
8 contemplated by Section 345 occur resulting in the loss of estate funds. In contrast, by virtue  
9 of the collateralization and reporting requirements imposed on U.S. Trustee Authorized  
10 Depositories, compliance with the U.S. Trustee Guidelines will ensure compliance with the  
11 requirements of 11 U.S.C. § 345(b). These requirements would not “needlessly handcuff” the  
12 Debtor but rather protect estate funds as Congress envisioned. *Cf. In re Ditech Holding Corp.*,  
13 605 B.R. at 22 (requiring debtors to bring accounts into compliance with Section 345(b)).  
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15 23. To the extent the Court is inclined to approve the Cash Management Motion,  
16 such relief should be limited to the Prepetition Bank Accounts specifically identified.  
17 Moreover, the final order should: (i) require the Debtor to institute a system to regularly  
18 “sweep” the funds from the Prepetition Bank Accounts into a debtor in possession account at a  
19 U.S. Trustee Authorized Depository; and (ii) prohibit the Debtor from opening new accounts  
20 unless such accounts are debtor in possession accounts at U.S. Trustee Authorized Depositories  
21 in the District of Nevada.  
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23 24. The U.S. Trustee expressly reserves her rights to oppose any amendments or  
24 supplements to the Cash Management Motion and/or any other additional relief requested in any  
25 subsequently filed but related pleadings.  
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1 IV. CONCLUSION

2 WHEREFORE, the U.S. Trustee requests that the Court enter an order (i) sustaining the  
3 Opposition; (ii) denying the Cash Management Motion as it pertains to the Debtor's request to  
4 maintain the Prepetition Bank Accounts; and (iii) granting such other and additional relief as is  
5 just and equitable.  
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7  
8 Dated: April 5, 2023

TRACY HOPE DAVIS  
UNITED STATES TRUSTEE

9  
10 /s/ Jared A. Day  
11 Jared A. Day  
12 Trial Attorney for United States Trustee  
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**CERTIFICATE OF SERVICE**

I, ANABEL ABAD SANTOS, under penalty of perjury declare: That declarant is, and was when the herein described service took place, a citizen of the United States, over 18 years of age, and not a party to nor interested in, the within action; that on April 5, 2023, I caused a copy of the foregoing

**UNITED STATES TRUSTEE'S OPPOSITION AND RESERVATION OF RIGHTS TO DEBTOR'S MOTION FOR FINAL ORDERS (I) AUTHORIZING CONTINUED USE OF PREPETITION BANK ACCOUNTS; AND (II) GRANTING RELATED RELIEF**

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10 I declare under penalty of perjury that the foregoing is true and correct.

11 Signed: April 5, 2023

12 /s/ Anabel Abad Santos

13 ANABEL ABAD SANTOS